Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

93-953

No.

In The

Supreme Court of The United States

October Term, 1993

PSJ Corp., L. Shieh, et al.,

Petitioners,

vs.

Superior Courts, Court of Appeal, and Supreme Court of The State of California,

Respondents,

Fulbright & Jaworski, et. al.,
O'Melveny & Meyers, et al.,
A. Castellano, et al., and
W. Christopher, et al.,

Real Parties
In Interest.

Petition for Writ of Certiorari to the Supreme Court of the State of California

PETITION FOR WRIT OF CERTIORARI

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129 pp

THE QUESTIONS PRESENTED FOR REVIEW

On January 8, 1993, Petitioners' then lawyers, not Petitioners, filed a disqualification against Judge Kakita. Judge Kakita did not answer the disqualification within 10 days as required by California Code of Civil Procedue, Section 170.3 (c)(4). California courts refused to comply with the automatic disqualification law, but issued an order prohibiting Petitioners and their lawyers from filing any new disqualification with a threat of contempt and imposed sanctions in the amount of $5,000.00 against Petitioners' attorney Rollins and Petitioner Shieh, a party in the case. Given the foregoing, the issues are:

1. Whether the pre-filing order prohibiting Petitioners' lawyers from filing a disqualification violates Petitioners' right to counsel, right to fair trial and other federally protected rights secured by the Constitution and laws of the United States.

2. Whether the pre-filing order, which in consequence granted litigants a license to commit assault, battery, and breach of peace against Petitioners and Petitioner Shieh's family members (all of whom are non-caucasian), and to file lawsuits against Petitioners, violates Petitioners' privileges, immunities, life, liberty, property, and equal protection, under the Fourteenth Amendment of the Constitution of the United States.

3. Whether the refusal of the California courts to automatically disqualify Judge Kakita, which resulted in the consequences as stated above, violates Petitioners' right to a fair trial and other federally protected rights.

ALL PARTIES TO THE PROCEEDING

PETITIONERS:

PSJ Corp., a California Corporation ("PSJ"), Say & Say, a California Corporation ("Company"), Percy Chien and L. Shieh.

Respondents:

The Superior Courts, the Court of Appeal and the Supreme Court of the State of California

Real Parties in Interest:

Fulbright & Jaworski, et al.,
A. Castellano, et al., et al.,
W. Christopher, et al., and
O'Melveny & Meyers, et al..

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IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1993

PSJ Corp.,a California Corporation,
Say & Say,a California Corporation,
Percy Chien and L. Shieh,

Petitioners,

vs.

The Superior Courts, the Court of
Appeal and the Supreme Court of
the State of California,

Respondents,

Fulbright & Jaworski, et al.,
A. Castellano, et al., et al.,
W. Christopher, et al., and
O' Melveny & Meyers, et al.,

Real Parties
In Interest.

To the Honorable William Rehnquist, the Chief Justice, and Associate Justices of the Supreme Court of the United States.

PSJ Corp., a California Corporation ("PSJ"), Say & Say, a California Corporation ("Company"), Percy Chien ("Chien") and L. Shieh ("Shieh"), the Petitioners herein, pray that a writ of certiorari be issued to review the judgments of California courts.

I. OPINIONS BELOW

The opinions of the Supreme Court of California dated September 15, 1993 which denied the petition for review are unreported and are attached in petitioners' Appendix A, B and C. The judgments of the Court of Appeal

dated June 30, 1993 (petition for rehearing denied upholding Orange Superior Court's order and imposing $15,000.00 sanctions against Petitioner Shieh and attorney Rollins) are attached in the Appendix D, E and F. The orders of the Los Angeles Superior Court of the State of California dated February 26, 1993 by Judge Ted Millard, which imposed a pre-filing/pre-denial order upon the petitioners and their attorneys are attached in the Appendix H, I and J. The declaration of Karen Karagezyan, messenger of the Best Plus, proving his service of the disqualification for cause against Judge Kakita, dated Janaury 8, 1993, in Fulbright & Jaworski v. PSJ, Percy Chien, Shieh Case No. BC041515 ("FJ case"), Say & Say, et al. v. Castellano, et al., BC 059833 ("Castellano case"), and Shieh

et al. v. O'Melveny & Meyers, et al. BC 054981 ("OMM case") is attached in the Appendix P.

II. Jurisdiction

The judgment of the Supreme Court of California was entered on September 15, 1993, which summarily denied the petitioners' petition for review in cases involving federally and constitutionally protected rights and issues. Under Title 28 U.S.C. 1257 (a), Title 28 U.S.C. 1651 (a) and the United States Supreme Court ("this Court") Rule 10.1 (c), this Court will review a state judgment by writ of certiorari, if "a state court ... has decided an important question of federal law which has not been, but should be, settled by this court, or has decided a federal question in a way

that conflicts with applicable decisions of this Court."

III. FEDERAL LAW INVOLVED

1. The pre-filing/pre-denial order prohibiting Petitioners' lawyers from filing a disqualification violates Petitioners' right to counsel, right to fair trial and other federally protected rights secured by the Constitution and laws of the United States.

2. The pre-filing/pre-denial order, which in consequence granted Caucasian litigants free reign to commit assault, battery, and breach of the peace against Petitioners and Petitioner Shieh's family members (all of whom are non-caucasian), and to file endless lawsuits against Petitioners, violates Petitioners' privileges,

immunities, life, liberty, property, and equal protection, under the Fourteenth Amendment of the Constitution of the United States.

3. The refusal of the California courts to automatically disqualify Judge Kakita has resulted in the consequence as stated above, violates Petitioners' right to fair trial and other federally protected rights.

IV. STATEMENT OF CASE

In or about October, 1992, the California courts assigned all of cases, whether Petitioner Shieh is a plaintiff or defendant, to California Superior court Judge Kakita. Before he reviewed the cases, he stated that he

would get rid of all of Shieh's cases. Judge Kakita admitted that he made such statements in his subsequent declaration, under penalty of perjury. Judge Kakita did exactly what he said.

In Say & Say, L. Shieh v. Castellano, et al., BC059833 ("Castellano case") and Shieh et al. v. O'Melveny & Meyers, et al. BC 054981 ("OMM case"), Judge Kakita (1) declared Shieh a vexatious litigant ("VL") simply because federal Judge Pfaelzer made a comment to his lawyer that it is ridiculous to hold general partners liable for other general partners' actions under s 15015 of the California Uniform Partnership Act, (2) issued a pre-filing/pre-denial order, permanently barring Shieh and his lawyers, in effect, from filing any new litigation in California courts, (3) issued two body attachments without

bail, (4) ordered Shieh to post more than $ 44.5 million security for in pro per defendants' alleged in pro per attorneys' fees, (5) imposed more than $ 100,000 sanctions against Shieh and Shien's attorneys because in pro per defendant Highberger's one frivolous motion and one frivolous reply paper cost more than $ 100,000.00.

In Fulbright & Jaworski v. Shieh, Hollingsworth, et al. L.A.S.C. Case No. BC 041515 ("FJ Case"), Judge Kakita refused to vacate a default against Shieh, PSJ Corp., and Percy Chien even if the court has no jurisdiction to enter default.

In or about October, 1992, petitioners' lawyers, not petitioners, filed a peremptory challenge against Judge Kakita. Judge Kakita refused to recuse himself.

On Janaury 8, 1993, Petitioners' lawyers, not Petitioners, filed a disqualification for cause against Judge Kakita. Judge Kakita refused to answer or respond within 10 days and was thus automatically disqualified under 170.3 (c) (4) of the California Code of Civil Procedure ("CCP"). California Courts refused to assigne a new judge. Instead, Judge Millard of the Orange County Superior Court issued a pre-filing/pre-denial order prohibiting Petitioners and Petitioners' lawyers from filing any disqualification "for life". Justice Spencer of the California Court of Appeal created a false rendition of facts and sanctioned Shieh and his lawyers claming that Shieh was responsible in requesting his attorney to file a writ of mandate when Judge Millard refused to "reconsider and

clarify" why Millard failed to consider the issues of "automatic disqualification".

As this Court will review several subsequent petitions for certiorari, the pre-filing order has resulted in the following consequences:

1. Caucasian litigants started to commit assault and battery, such as Gary Hollingsworth on June 9, 1993, and assault and breach of the peace, such as California lawyers Peter Mason, David Eisen and D. Jay Ritt, against Shieh, his one year old baby and his family members. Because California courts refused to disqualify Judge Kakita based on the peremptory challenge and automatic disqualification, Judge Kakita has issued a pre-denial order denying Shieh's rights to file a complaint, or

cross-complaint against the above-mentioned Caucasian lawyers. Justice Spencer extended such order and prohibited both Shieh and all of Shieh's lawyers from filing complaints, appeals and writs.

All requests for pre-filing permission of Petitioners complaints and appeals filed by Petitioners' lawyers were automatically dismissed without notice and hearings. The California Supreme Court has completely ignored them.

3. Shieh has been and will continue to be subject to assault and battery, and breach of the peace, because his right to sue was completely deprived by the California Courts, as all complaints, appeals and writs are subject to automatic dismissal.

4. Caucasian litigants took advantages of such pre-filing order and

filed numerous lawsuits against Shieh. Because California courts deprived Shieh's right to counsel and right to defend, four (4) separate default judgments were entered against Shieh without notice and without hearing.

V. REASONS FOR GRANTING WRIT

This Court's review is absolutely necessary because the California state courts "were being used to harass and injure [Petitioners], either because the state courts were powerless to stop deprivation or were in league with those [rich, large, and influential law firms] which were bent upon abrogation of federally protected rights", Pulliam v. Allen, (1984) 466 U.S. 522; 104 S. Ct. 1970, 1980. All of Petitioners' constitutionally and federally

protected rights were completely, permanently and totally deprived by the California courts. There is absolutely no way of access to the California State Courts and all and wrongdoers are thus exempt from justice.

I. THE PRE-FILING/PRE-DENIAL ORDER PROHIBITING PETITIONERS' LAWYERS FROM FILING A DISQUALIFICATION VIOLATES PETITIONERS' RIGHT TO COUNSEL, RIGHT TO FAIR TRIAL AND OTHER FEDERALLY PROTECTED RIGHTS SECURED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES.

A. Right To Fair Trial

Few, if any, interests under the Constitution are more fundamental than the right to have a fair trial. Gentile

v. State Bar of Nevada (1991) 111 S.Ct. 2720. The Sixth Amendment right to counsel exists in order to protect the fundamental right to fair trial. Lockhart v. Fretwell (1993) 113 S. Ct. 838. In civil litigation, a party is entitled to have an impartial and fair tribunal to hear the case. The California courts discriminated against Petitioners by refusing to apply the same peremptory challenge and automatic disqualification for minority litigants.

B. The Conduct Of Justices Of the Court Of Appeal Violated The 42 U.S.C. Sections 1983, 1988 And Other Civil Rights Laws Because Of Petitioner Shieh's Color, Race, National Origin, Religion, And language And Cultural Background

All appeals filed by Petitioners' lawyers, were automatically dismissed without notice and without hearing by the Court of Appeal, through Justices Spencer and Turner. Justice Spencer of Court of Appeal of California also issued an OSC Re: Dismissal of Appeals and Imposition of Sanctions in the Castellano case in retaliation against Petitioners and their counsel.

The pre-denial order violates the standards set forth in De Long v. Hennessey, (1990) 192 F. 2d 1144, because,

"(1) the record does not show that [plaintiffs were] provided with an opportunity to oppose the order before it was entered;

(2) the district court [here, California Superior Courts and California Court of Appeal] did not

create an adequate record for review;

(3) the district court [here, California Superior Courts and California Court of Appeal] failed to make a substantive finding as to the frivolous or harassing nature of De Long's [here, plaintiffs'] actions; and

(4) the district court's order was overly broad."

More importantly, the orders and judgments of the Justices in the California Court of Appeal have specifically infringed upon Petitioners' fundamental rights as guaranteed by the U.S. Constitution, by the 42 U.S.C. Section 1983, 1988 and other federal laws, and that the conduct, intent and motives of the Justices in the Court of Appeal unconstitutionally and illegally discriminate and retaliate against

Petitioners on the basis of his race, color, national origin, religion, etc.

C. The Court of Appeal And the Trial Courts "Were Being Used To Harass And Injure [Petitioner Shieh], Either Because the State Courts Were Powerless To Stop Deprivation Or Were In League With Those [Rich, Large, And Influential Law Firms] Which Were Bent Upon Abrogation of Federally Protected Rights" (Emphasis Added.) Pulliam v. Allen, (1984) 466 U.S. 522; 104 S. Ct. 1970, 1980

In Mitchum v. Foster, (1972) 407 U.S. 225, 240; 92 S. Ct. 2125, 2161, the Court stated that "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with

those who were bent upon abrogation of federally protected rights". (Emphasis added.) This is precisely the case here. The trial courts and the Court of Appeal were or are being used by large, rich and influential law firms to harass and injure Petitioner Shieh, and were or are in league with such law firms which were or are bent upon abrogation of federally protected rights.

The Judges/Justices in trial court and the Court of Appeal knowingly, intentionally and maliciously disregarded the clear and plain language of the federal law and the U.S. Constitution, and created totally false and outrageous stories without any facts and evidence, to justify their unconstitutional (1) declaration of Shieh as a vexatious litigant, (2) pre-denial orders and (3) excessive

security. The judgments of trial courts and the Court of Appeal against Petitioners are a total and permanent deprivation of Petitioners' right to counsel, right to sue, and their fundamental right of access to the court, as well as totally and permanently silencing Petitioners' voice in asserting their First Amendment Rights to defend themselves or to support their causes of action.

II. Pre-filing/pre-denial Order Is Unconstitutional

To the extent that the restraining order lasts forever, it sounds like a death penalty and even much worse than a life imprisonment in this respect, because, even a sentenced criminal is entitled to certain relief remedies such as parole, probation, conditional release, rehabilitation,

pardon, etc..

Right of potential litigants to use of judicial procedures is constitutionally protected by prohibitions against state deprivation of property without due process of law. A potential litigant is protected by constitutional right of access to courts for all persons.

The pre-filing order has no boundaries as imposed by Judge Millard and Judge Kakita in the present case. In David Moy v. United States (1990) 906 F.2d at 476, U.S. Court of Appeals for Ninth Circuit states: "the Court order requiring a litigant to obtain court approval prior to filing of any complaint was overly broad; the requirement should have been imposed only on subjects covered by litigant's

prior frivolous pleadings ... We cannot predict what harm might come to him as a result, and he should not be forced to predict it either. What he does know is that a Sword of Damocles hangs over his hopes for federal access for the foreseeable future."

Under federal law, the pre-filing order must be narrowly tailored to prevent infringement on the litigator's right of access to the courts. Steven M. De Long v. Michael Hennessey (1990) 912 F.2d 1144; 1990 US App. Lexis 15253. If restrictive orders are used too freely or couched in overly broad terms, injunctions against future litigation may block free access to the courts. Michael R. Wood v. Santa Barbara Chamber of Commerce (1983) 705 F.2d at 1525.

VI. CONCLUSION

For the foregoing reasons, the Petition for a writ of certiorari should be granted.

Dated: December 9, 1993

Respectfully submitted

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Counsel for Petitioners
L. Shieh, an individual,
and Say & Say,a
california corporation

Second Appellate District, Division One, No. B074282
S034389

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

P S J CORPORATION Et Al.,

Petitioners

v.

LOS ANGELES COUNTY SUPERIOR COURT,

Respondent

FULBRIGHT & JAWORSKI,

Real Party

In Interest

Petition for review DENIED.

Arabian
Acting
Chief Justice

Second Appellate District, Division One, No. B074229
S034453

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SAY & SAY AND L. SHIEH Et Al.,

Petitioners

v.

LOS ANGELES COUNTY SUPERIOR COURT,

Respondent

ANDREW CASTELLANO Et Al.,

Real Parties In Interest

Petition for review DENIED.

_____

Arabian
Acting
Chief Justice

Second Appellate District, Division One, No. B074286
S034390

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

LIANG-HOUH SHIEH,

Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT,

Respondent

WARREN CHRISTOPHER Et Al.,

Real Parties In Interest

Petition for review DENIED.

_____

Arabian
Acting
Chief Justice

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK
DIVISION: 1 DATE: 06/30/93

Guy Rollins
301 N. Lake Avenue
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RE: Psj Corp.
vs.
S.c.l.a.
Fulbright & Jaworski
1 Civil B074282
Los Angeles No. BC041515

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
DIVISION ONE

PSJ CORPORATION, PERCY CHIEN and LIANG-HOUH SHIEH,	B074282 (Super. Ct. No. BC41515
Petitioners,	
v.	
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE	

COUNTY OF LOS ANGELES,

Respondent.

FULBRIGHT & JAWORSKI, etc.,

Real Party
in Interest.

ORIGINAL PROCEEDING; Petition for Writ of Mandate.

Writ Denied.

Guy Rollins and James L. Andion for Petitioner.

No Appearance for Respondent.

Quinn, Kully & Morrow, Margaret M. Morrow and D. Jay Ritt for Real Party in Interest.

INTRODUCTION

On April 9, 1993, this court issued an order requiring petitioners

and their counsel, Guy Rollins, to show cause before this court at 9:00 a.m. on May 25,1993, why sanctions should not be imposed for filing the petition for a writ of mandate or prohibition in this matter. Neither petitioners nor Mr. Rollins saw fit to appear on May 25, although different counsel, James L. Andion, did file a written response on behalf of petitioners. We hold the petition was frivolous and impose sanctions of $5,000 each against petitioner and Mr. Rollins, separately and individually.

FACTUAL BACKGROUND

In November 1992, counsel for petitioners filed a motion to disqualify Judge Edward Y. Kakita for cause; Judge Kakita did not respond. On December 24, 1992, petitioner Shieh

himself filed a statement of disqualification in which he complained that Judge Kakita had ignored the facts and law, Characterizing him as "the most outrageous judge in ... America's adverse rulings demonstrate that he has conspired and continues to conspire with defendants in other cases and the plaintiff in this case against petitioner. Petitioner PSJ Corporation also filed a statement of diwqualification on the same date. According to petitioners, Judge Kakita would be a witness to testify as to how all the Caucasian lawyers and judges were conspiring against Shieh. Judge Kakita filed a reply to this challenge, commentiong that the charges were "outrageous."

On January 11, 1993, petitioners filed a third

disqualification of Judge Kakita. On January 20, Judge Kakita ordered this document striken, finding it was repetitive of two prior motions for disqualification.

On February 26, 1993, the Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, sitting by assignment, denied the motions to disqualify Judge Kakita. In Judge Millard's words, "{t}his tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking." The judge assigned to hear one of these challenges termed it "'wholly frivolous and a sham,' as well as describing Mr. Shieh as being "vexatious.' That ruling was made on or about June 17, 1992, and can best be described as an

understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being "biased' or a 'racist.'" Upon denying the challenges, Judge Millard ordered that petitioner and any of his counsel must first seek and obtain leave from the presiding judge, upon a showing of good cause, to file any further challenges for cause against Judge Kakita.

Petitioner Shieh challenged this order by seeking a writ of mandate; that Petition was denied by Division Two of this court in Shieh v. Superior Court (B073924, March 24, 1993); a petition for review was denied on April 21, 1993. On March 30, 1993, counsel for petitione filed another petition for a writ of mandate or prohibition, again challenging Judge

Millard's order.

DISCUSSION

Petitioners and their counsel are doiing nothing with this second petition but seeking a second bite of the apple. This is the worst sort of forum shopping. Not only is this petition repetitive, but it is untimely. Judge Millard's order of February 26, 1993 was served by mail on March 4. Petitioner thus had ten days (plus five days for mail service) in which to file the instant petition. (Code Civ. Proc., s 170.3, subd. (d), 1013, subd. (a).) This requirement is absolute and inflexible. (Guedalia v. Superior Court (1989) 211 Cal. App. 3d 1156, 1159-1160, review den. Aug. 31, 1989.) Accordingly, the instant petition, filed on March 26, 1993,

necessarily was untimely notwithstanding petitioner's request for clarification and reconsideration of Judge Millard's ruling.

The instant writ petition undeniably is frivolous. No attorney reasonably could have believed either that the purported "new facts" recited in this petition are anything of the sort or that it was timely filed. Petitioner Shieh is himself an attorney and thus must be held equally culpable with the counsel selected to represent petitioners in this matter. Moreover, this is part of a pattern of repeatedly relitigating the same issue, as evidenced by petitioner Shieh's extensive history in the trial and appellate courts, during which his actions repeatedly have been characterized as frivolous and he repeatedly has been denominated a

vexatious litigant. Finally, given how well settled the timeliness proposition is, there can be no reason for having filed the instant petition other than to cause respondents further unnecessary delay and expense. This "classic" instance meets both the subjective and the objective standards of In re Marriage of Flaherty (1982) 31 Cal. 3d 637, 649-650.

The petition for writ of mandate is denied. Sanctions are awarded against petitioner Shieh and Guy Rollins, individually and separately, in the sum of $5,000 each. The sanctions are to be paid to counsel for real party in interest within 10 days.

NOT TO BE PUBLISHED

SPENCER, P.J.

I concur: ORTEGA, J.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 06/30/93

RE: Shieh, L

vs.

S.c.l.a.

Christopher, Warren

2 Civil BO74286

Los Angeles No. BC054981

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B074286

(Super. Ct. NO.054981)

L. SHIEH,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

WARREN CHRISTOPHER et al.,

Real parties in Interest.

ORIGINAL PROCEEDING; Petition for Writ of Mandate.

Writ Denied.

Guy Rollins and James L. Andion for Petitioner.

No Appearance for Respondent.

Gibson, Dunn & Crutcher and William Highberger for Real Parties in

Interest.

INTRODUCTION

On April 2, 1993, this court issued an order requiring petitioner and his counsel, Guy Rollins, to show cause before this court at 9: 00 a.m. on May 25, 1993, why sanctions should not be imposed for filing the petition for a writ of mandate or prohibition in this matter. Neither petitioner nor Mr. Rollins saw fit to appear on May 25, although different counsel, James L. Andion, did file a written response on behalf of petitioner. We hold the petition was frivolous and impose sanctions of $5,000 each against petitioner and Mr. Rollins, separately and individually.

FACTUAL BACKGROUND

In November 1992, counsel for petitioner filed a motion to disqualify Judge Edward Y. Kakita for cause; Judge Kakita did not respond. On December 17, 1992 petitioner himself filed a statement of disqualification in which he complained that Judge Kakita "has completely ignored the facts and law, and has destroyed my cases and career" and detailed how Judge Kakita's adverse rulings demonstrate that he has conspired and continues to conspire with defendants (who include more than 340 general partmers of 2 law firms) against petitioner. According to petitioner, Judge Kakita would be a witness to testify as to how all the Caucasian lawyers and judges were conspiring against Shieh. Judge Kakita filed a reply to this challenge, commenting that the charges were

"outrageous."

On January 11, 1993, petitioner filed a third disqualification of Judge Kakita. On January 20, Judge Kakita ordered this document stricken, finding it was repetitive of two prior motions for disqualification.

On February 26, 1993, the Hon. Ted Millard, Assistant Presiding Judge of the Orange Courty Superior Court, sitting by assignment, denied the motions to disqualify Judge Kakita. In Judge Millard's words, "[t]his tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking." The judge assigned to hear one of these challenges termed it "'wholly frivolous and a sham,' as well as describing Mr.

Shieh as being 'vexatious.' That ruling was made on or about June 17, 1992, and can best be described as an understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being 'biased' or a 'racist.'" Upon denying the challenges, Judge Millard ordered that petitioner and any of his counsel must first seek and obtain leave from the presiding judge, upon a showing of good cause, to file any further challenges for cause against Judge Kakita.

Petitioner challenged this order by seeking a writ of mandate; that petition was denied by Division Two of this court in Shieh v. Superior Court (B073924, March 24, 1993); a petition for review was denied on April 21, 1993. On March 30, 1993, counsel

for petitioner filed another petition for a writ of mandate or prohibition, again challenging Judge Millard's order.

DISCUSSION

Petitioner and his counsel are doing nothing with this second petition but seeking a second bite of the apple. This is the worst sort of forum shopping. Not only is this petition repetitive, but it is untimely. Judge Millard's order of February 26, 1993 was served by mail on March 4. Petitioner thus had ten days (plus five days for mail service) in which to file the instant petition. (Code Civ. Proc., Section 170.3, subd. (d), 1013, subd. (a).) This requirement is absolute and inflexible. (Guedalia v. Superior Court (1989) 211 Cal. App. 3d

1156, 1159-1160, review den. Aug. 31, 1989.) Accordingly, the instant petition, filed on March 30, 1993, necessarily was untimely notwithstanding petitioner's request for clarification and reconsideration of Judge Millard's ruling.

The instant writ petition undeniably is frivolous. No attorney reasonably could have believed either that the purported "new facts" recited in this petition are anything of the sort or that it was timely filed. Petitioner is himself an attorney and thus must be held equally culpable with the counsel he selected to represent him in this matter. Moreover, this is part of a pattern of repeatedly relitigating the same issue, as evidenced by petitioner's extensive history in the trial and appellate courts, during which his actions

repeatedly have been characterized as frivolous and he repeatedly has been denominated a vexatious litigant. Finally, given how well settled the timeliness proposition is, there can be no reason for having filed the instant petition other than to cause respondents further unnecessary delay and expense. This "classic" instance meets both the subjective and the objective standards of In re Marriage of Flaherty (1982) 31 Cal. 3d 637, 649-650.

The petition for writ of mandate is denied. Sanctions are awarded against petitioner and Guy Rollins, individually and separately, in the sum of $5,000 each. The sanctions are to be paid to counsel for real parties in interest within 10 days.

NOT TO BE PUBLISHED

SPENCER,

P.J.

I concur:

ORTEGA, J.

OFFICE OF THE CLERK

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 06/30/93

Guy Rollins

301 N.Lake Avenue

Suite 720C

Pasadena, CA. 91101

RE: Say & Say

vs.

S.c.l.a.

Castellano, Andrew

1 Civil B074299

Los Angeles No. BC059833

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B074299

(Super. Ct. NO BC059833)

SAY & SAY and L. SHIEH,

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

ANDREW CASTELLANO et al.,

Real Parties in Interest.

ORIGINAL PROCEEDING; Petition for Writ of Mandate.

Writ Denied.

Guy Rollins and James L. Andion for Petitioners.

No Appearance for Respondent, Severson & Werson and Mark J. Kenney for Real Party in Interest Francisco Araiza.

INTRODUCTION

On April 2, 1993, this court issued an order requiring petitioners and their counsel, Guy Rollins, to show cause before this court at 9:00 a.m. on May 25, 1993, why sanctions should not be imposed for filing the petition for a writ of mandate or prohibition in this matter. Neither petitioners nor Mr. Rollins saw fit to appear on May 25, although different counsel, James L. Andion, did file a written response on behalf of petitioners. We hold the petition was frivolous and impose sanctions of $5,000 each against

petitioner and Mr. Rollins, separately and individually.

FACTUAL BACKGROUND

In November 1992, counsel for petitioner Shieh filed a motion to disqualify Judge Edward Y. Kakita for cause; Judge Kakita did not respond. In December 1992, petitioner Shieh himself filed a statement of disqualification in which he complained that Judge Kakita "has completely ignored the facts and law, and has destroyed my cases and career" and detailed how Judge Kakita's adverse rulings demonstrate that he has conspired and continues to conspire with defendants (who include all 440 general partners of a law firm) against petitioner. According to petitioner, Judge Kakita would be a witness to testify as to how

all the Caucasian lawyers and judges were conspiring against Shieh. Judge Kakita filed a reply to this challenge, commenting that the charges were "outrageous."

On January 11, 1993, petitioners filed a third disqualification of Judge Kakita. On January 20, Judge Kakita ordered this document stricken, finding it was repetitive of two prior motions for disqualification.

On February 26, 1993, the Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, sitting by assignment, denied the motions to disqualify Judge Kakita. In Judge Millard's words, "[t]his tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are

not to Mr. Shieh's liking." The judge assigned to hear one of these challenges termed it "'wholly frivolous and a sham,' as well as describing Mr. Shieh as being 'vexatious.' That ruling was made on or about June 17, 1992, and can best be described as an understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being 'biased' or a 'racist.'" Upon denying the challenges, Judge Millard ordered that petitioner and any of his counsel must first seek and obtain leave from the presiding judge, upon a showing of good cause, to file any further challenges for cause against Judge Kakita.

Petitioner Shieh challenged this order by seeking a writ of mandate; that petition was denied by

Division Two of this court in Shieh v. Superior Court (B073924, Marcyh 24, 1993); a petition for review was denied on April 21, 1993. On March 30, 1993, counsel for petitioners filed another petition for a writ of mandate or prohibition, again challenging Judge Millard's order.

DISCUSSION

Petitioners and their counsel are doing nothing with this second petition but seeking a second bite of the apple. This is the worst sort of forum shopping. Not only is this petition repetitive, but it is untimely. Judge Millard's order of February 26, 1993 was served by mail on March 4. Petitioners thus had ten days (plus five days for mail service) in which to file the instant petition. (Code Civ.

Proc., Section 170.3, subd. (d), 1013, subd. (a).) This requirement is absolute and inflexible. (Guedalia v. Superior Court (1989) 211 Cal. App. 3d 1156, 1159-1160, review den. Aug. 31, 1989.) Accordingly, the instant petition, filed on March 26, 1993, necessarily was untimely notwithstanding petitioners' request for coarification and reconsideration of Judge Millard's ruling.

The instant writ petition undeniably is frivolous. No attorney reasonably could have believed either that the purported "new facts" recited in this petition are anything of the sort or that it was timely filed. Petitioner Shieh is himself an attorney and thus must be held equally culpable with the counsel he selected to represent him in this matter. Petitioner Say & Say is an entity

controlled solely by petitioner Shieh. Moreover, this is part of a pattern of repeatedly relitigating the same issue, as evidenced by petitioner Shieh's extensive histroy in the trial and appellate courts, during which his actions repeatedly have been characterized as frivolous and he repeatedly has been denominated a vexatious litigant. Finally, given how well selttled the timeliness proposition is, there can be no reason for having filed the instant petition other than to cause respondents further unnecessary delay and expense. This "classic" instance meets both the subjective and the objective standards of In re Marriage of Flaherty (1982) 31 Cal. 3d 637, 649-650.

The petition for writ of mandate is denied. Sanctions are awarded against petitioner Shieh and

Guy Rollins, individually and separately, in the sum of $5,000 each. The sanctions are to be paid to counsel for real parties in interest within 10 days.

NOT TO BE PUBLISHED

SPENCER, P. J.

I concur:

ORTEGA, J.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER

Dept. 1A

Chambers Session: No appearances. February 26, 1993, present Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and determine matters of judicial disqualification in this matter. CASE NO. BC 41515. FULBRIGHT & JAWORSKI v. SHIEH, et al.

DEFENDANT SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y. KAKITA.

The Court, pursuant to C.C.P. § 170.3 (c) (6), deems it unnecessary in this case to hold a hearing and decides

the question of disqualification on the basis of the statements submitted.

Mr. Shieh has caused by be filed Statements of Disqualification against Judge Kakita in three (3) different cases that were assigned to him involving Mr. Shieh as either a plaintiff or defendant. This tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking. He has unsuccessfully challenged the following state and federal judges on the grounds of bias: Judge Coleman A. Swart, Judge Xanthos, Judge Gadbois and Judge Davies. Judge Dickran Tevrizian who heard the challenge to Judge Gadbois termed the challenge "wholly frivolous and a sham," as well as describing Mr. Shieh as being "vexatious." That ruling

was made on or about June 17, 1992, and can best be described as an understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being "biased" or a "racist." Judge Kakita is but the latest target of his litigation terror.

It is well settled in this state that the expressions of opinion uttered by a judge, in what the judge conceives to be a discharge of his or her official duties, are not evidence of partiality within the disqualification statutes. (C.C.P. 170.2 [b]; KRELING v. SUPERIOR COURT (1944) 25 C.2d 305, 310-311; GUARDIANSHIP of JACOBSON (1947) 30 C.2d 312, 317-318.)

Where the charge of impartiality is made becuase of some prior ruling of the judge against a party or attorney,

in the same or related proceeding, it usually fails. (Cal. Procedure, 3rd Ed., Witkin, COURTS 4, pp. 111-112.) A party's remedy for an erroneous ruling or order, if there were any, is by appeal or writ, not a motion to disqualify. Were the rule otherwise, parties could regularly collaterally attack judgments by motions to disqualify rather than or in addition to appellate review. In short, prior rulings against a party in the course of the litigation, without "something more" are not grounds for disqualification within the meaning of C.C.P. Section 70.2 (b). As WITKIN suggests, prior rulings, even prior erroneous rulings (RYAN v. WELTE (1948) 87 C.A.2d 888) or opinions formed at trial without a showing of actual hostility or ill will do not disqualify a judge. The " something more" referred

to in the cases is not present in this case.

Furthermore, there is a general rule that where a party or the party's attorney acts toward a judge in a manner calculated to create bias or prejudice, disqualification of the judge ordinarily will not be required. A party or the attorney should not be able to engage in judge-shopping by manufacturing bias or prejudice that previously did not exist. See Judicial Conduct and Ethics, Shalman, Lubet & Alfini (1990) 5.06, - Acts Calculated to Create Bias, pp. 106-107 and cases cited therein.

Section 170.3, subd. (c) (1) requires that the disqualification statement set forth "the facts constituting the grounds" for disqualification of the judge. Mere conclusions of the pleader are

insufficient. (In re MORELLE (1970) 11 C.A. 3d 819, 843; URIAS v. HARRIS FARMS, INC. (1991) 234 C.A. 3d 415, 426.) Mr. Shieh's challenge is devoid of any "facts" constituting any ground of disqualification. It is replete with outrageous conclusionary allegations, unsupported by any specific facts. In short, no reasonable third party aware of the "facts" (as distinguished from conclusions) in this case would entertain a doubt as to the Judge Kakita's impartiality. Therefore, the request to disqualify Judge Edward Y. Kakita is denied.

Furthermore, since the challenge in this case is wholly frivolous, a sham, and outrageous, Mr. Shieh and/or any present or future counsel for Mr. Shieh is hereby ordered and directed not to file any further challenges for cause against Judge Kakita, without first

seeking and obtaining leave from the Presiding Judge or his designee, upon a showing of good cause to believe that said judge is not impartial, to do so.

The Clerk is directed to give notice by copy of this Minute Order.

IT IS SO ORDERED ON FEBRUARY 26, 1993.

THEODORE E. "TED" MILLARD, ASSISTANT PRESIDING JUDGE OF THE ORANGE COUNTY SUPERIOR COURT SITTING OF ASSIGNMENT BY THE JUDICIAL COUNCIL FOR LOS ANGELES COUNTY.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER

DEPT. 1A

Chambers Session: No appearances. February 26, 1993, present Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and determine matters of judicial disqualification in this matter. CASE NO. BC 059833 SAY & SAY, SHIEH v. CASTELLANO, et al. PLAINTIFF SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y. KAKITA.

The court, prusuant to C.C.P. Section 170.3(c)(6), deems it unnecessary in this case to hold a hearing and decides the question of disqualification on the basis of the

statements submitted.

Mr. Shieh has caused by be filed Statements of Disqualification against Judge Kakita in three (3) different cases that were assigned to him involving Mr. Shieh as either a plaintiff or defendant. This tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking. He has unsuccessfully challenged the following state and federal judges on the grounds of bias: Judge Coleman A. Swart, Judge Xanthos, Judge Gadbois and Judge Davies. Judge Dickran Tevrizian who heard the challenge to Judge Gadbois termed the challenge "wholly frivolous and a sham," as well as describing Mr. Shieh as being "vexatious." That ruling

was made on or about June 17, 1992, and can best be described as an underatatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being "biased" or a "racist." Judge Kakita is but the latest target of his litigation terror.

It is well settled in this state that the expressions of opinion uttered by a judge, in what the judge conceives to be a discharge of his or her official duties, are not evidence of partiality within the disqualification statutes. (C.C.P. Section 170.2 (b); KRELING v. SUPERIOR COURT (1944) 25 C. 2D 305, 310-311; GUARDIANSHIP OF JACOBSON (1947) 30 C.2D 312, 317-318.)

Where the charge of impartiality is made because of some prior ruling of

the judge against a party or attorney, in the same or related proceeding, it usually fails. (Cal. procedure, 3rd Ed., Witkin, COURTS Section 94, PP. 111-112.) A party's remedy for an erroneous ruling or order, if there were any, is by appeal or writ, not a motion to disqualify. Were the rule otherwise, parties could regularly collateral attack judgments by motions to disqualify rather than or in addition to appellate review. In short, prior rulings against a party in the course of the litigation, without "something more" are not grounds for disqualification within the meaning of C.C.P. Section 170.2 (b). As WITKIN suggests, prior rulings, even prior erroneous rulings (RYAN v. WELTE (1948) 87 C.A. 2d 888) or opinions formed at trial without a showing of actual hostility or ill will do not disqualify

a judge. The "something more" referred to in the cases is not present in this case.

Furthermore, there is a general rule that where a party or the party's attorney acts toward a judge in a manner calculated to create bias or prejudice, disqualification of the judge ordinarily will not be required. A party or the attorney should not be able to engage in judge-shopping by manufacturing bias or prejudice that previously did not exist. See Judicial Conduct and Ethics, Shalman, Lubet & Alfini (1990) Section 5.06, - Acts Calculated to Create Bias, pp. 106-107 and cases cited therein.

Section 170.3, subd. (c) (1) requires that the disqualification statement set forth "the facts constituting the grounds" for disqualification of the judge. Mere

conclusions of the pleader are insufficient. (In re MORELLI (1970) 11 C.A. 3d 819, 843; URIAS v. HARRIS FARMS, INC. (1991) 234 C.A. 3d 415, 426.) Mr. Shieh's challenge is devoid of any "facts" constituting any ground of disqualification. It is replete with outrageous conclusionary allegations, unsupported by any specific facts. In short, no reasonable third party aware of the "facts" (as distinguished from conclusions) in this case would entertain a doubt as to the Judge Kakita's impartiality. Therefore, the successive requests to disqualify Judge Edward Y. Kakita are denied.

Furthermore, since the challenge in this case is wholly frivolous, a sham, and outrageous, Mr. Shieh and/or any present or futute counsel for Mr. Shieh is hereby ordered and directed not to file any further challenges for cause

against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designee, upon a showing of good cause to believe that said judge is not impartial, to do so.

The clerk is directed to give notice by copy of this Minute Order.

IT IS SO ORDERED ON February 26, 1993.

THEODORE E. "TED" MILLARD,
ASSISTANT PRESIDING JUDGE OF
THE ORANGE COUNTY SUPERIOR
COURT SITTING ON ASSIGNMENT BY
THEJUDICIAL COUNCIL FOR LOS
ANGELES COUNTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

—

MINUTE ORDER

DEPT. 1A

Chambers Session: No appearances. February 26, 1993, present Hon. Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and determine matters of judicial disqualification in this matter.

CASE NO. BC 054981. SHEH v. CHRISTOPHER, et al. PLAINTIFF SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y. KAKITA.

The Court, pursuant to C.C.P. § 170.3 (c) (6), deems it unnecessary in this case to hold a hearing and decides the question of disqualification on the basis of the statements submitted.

Mr. Shieh has caused by be filed Statements of Disqualification against Judge Kakita in three (3) different cases that were assigned to him involving Mr. Shieh as either a plaintiff or defendant. This tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking. He has unsuccessfully challenged the following state and federal judges on the grounds of bias: Judge Coleman A. Swart, Judge Xanthos, Judge Gadbois and Judge Davies. Judge Dickran Tevrizian who heard the challenge to Judge Gadbois termed the challenge "wholly frivolous and a sham," as well as describing Mr. Shieh as being "vexatious." That ruling was made on or about June 17, 1992, and can best be described as an

understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being "biased" or a "racist." Judge Kakita is but the latest target of his litigation terror.

It is well settled in this state that the expressions of opinion uttered by a judge, in what the judge conceives to be a discharge of his or her official duties, are not evidence of partiality within the disqualification statutes. (C.C.P. 170.2 (b); KRELING v. SUPERIOR COURT (1944) 25 C.2d 305, 310-311; GUARDIANSHIP of JACOBSON (1947) 30 C. 2d 312, 317-318.)

Section 170.3, subd. (c)(1) requires that the disqualification statement set forth "the facts constituting the grounds" for disqualification of the judge. Mere

conclusions of the pleader are insufficient. (In re MORELLI (1970) 11 C.A. 3d 415, 426.) In this particular challenge the allegation is that Judge Kakita "indicated quite strongly that he would not like having all the cases assigned to him and did not even want the within action assigned to him." The exact words used are unknown.

Mr. Shieh's challenge is devoid of any "facts" constituting any ground of disqualification. In short, no reasonable third party aware of the "facts" (as distinguished from conclusions) in this case would entertain a doubt as to the Judge Kakita's impartiality. Therefore, the request to disqualify Judge Edward Y. Kakita is denied.

Furthermore, since Mr. Shieh has demonstrated a vexatious pattern of challenging almost every judge who has

made a ruling against him and has yet had one sustained, Mr. Shieh and/or any present or future counsel for mr. Shieh is hereby ordered and directed not to file any furthr challenges for cause against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designee, upon a showing of good cause to believe that said judge is not impartial, to do so.

The Clerk is directed to give notice by copy of this Minute order.

IT IS SO ORDERED ON February 26, 1993.

THEODORE E. "TED" MILLARD, ASSISTANT PRESIDING JUDGE OF THE ORANGE COUNTY SUPERIOR COURT SITTING ON ASSIGNMENT BY THE JUDICIAL COUNCIL FOR LOS ANGELES COUNTY.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

DEPT. 1

Court convened at 9:00 a.m. March 22, 1993,present Hon. Theodore E. Millard, Judge Assigned, NONE Deputy Clerk NONE Deputy Sheriff; NONE Reporter and the following proceedings were had:

BC 04-15-15 FULBRIGHT & JAWORSKI VS. SHIEH

BC 05-49-81 SHIEH VS. CHRISTOPHER

BC 05-98-33 SAY & SAY VS. CASTELLANO

REQUEST FOR CLARIFICATION, MODIFICATION AND RECONSIDERATION

There were no appearances. The Court, having received and reviewed the

Plaintiff's Request for Clarification, Modification and Reconsideration, now rules as follows:

The request is denied. ENTERED 3-22-93

PREPARED BY: D. Lynn Fenton.

Theodore E. Millard, Judge of the Orange County Superior Court acting as a Judge of the Los Angeles Superior Court

(See attached mailing list)

I, JAMES H. DEMPSEY, County Clerk, and Clerk of the superior Court, in and for the county of Los Angeles, State of California,hereby certify that I am not a party to the within action or proceeding and that on March 22, 1993, I served a copy of this Minute order on the party named above by depositing a true copy, enclosed in a sealed

envelope with postage thereon fully prepaid, in the United States Postal mail box at Santa Ana, California addressed as indicated above.

JAMES H. DEMPSEY, County Clerk and Clerk of the Superior Court in and for the County of Los Angeles

Dated: March 22, 1993 BY: Deputy Clerk

MINUTE ORDER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER

DEPT. 1A

Chambers Session: No appearances.

March 29, 1993, present Hon.Ted Millard,

Assistant Presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and determine matters of judicial disqualification in this matter. CASE NO. BC 41515. FULBRIGHT & JAWORSKI v. SHIEH, et al.

DEFENDANT SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y.KAKITA.

Mr. shieh has caused multiple Statements of Disqualification against

Judge Kakita in three (3) different cases that were assigned Judge Kakita involving mr. Shieh as either a plaintiff or defendant.This tripartite challenge to Judge Kakita was denied by this court on February 26, 1993. At that time the court specifically found that the challenge was wholly frivolous, a sham,and outrageous. Mr. Shieh and/or any present or future counsel for Mr. Shieh was also ordered and directed not to file any further challenges for cause against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designee, upon a showing of good cause to believe that said judge is not impartial to do so.On March 29, 1993 the court received and reviewed three (3) identical documents entitled "New and Supplemental Request for Clarification, Modification and

Reconsideration (Re: Disqualification of Honorable Judge Kakita.) Last week the court reviewed a group of three (3) other identical documents. The court at that time denied any request to clarify, modify or reconsider its prior ruling denying the challenges to Judge Kakita. The dawn of a new week produced this identical group of documents seeking the same type of relief. The court hereby orders this new group of documents striken. They are frivolous, a sham, and outrageous. In addition they are untimely and not supported by any new facts. The clerk is instructed to cancel the "filed stamp" and replace it with the notation "lodged, but not filed - striken by order of the court."

Furthermore, Mr. Shieh and/or any present or future counsel for Mr. Shieh is also ordered and directed not to

file any further motions or requests of any kind for clarification, modification and/or reconsideration on the court's ruling on challenges for cause against Judge Kakita, without fiest seeking and obtaining leave from the Presiding Judge or his designee.

The Clerk is directed to give notice by copy of this Minute Order.

IT IS SO ORDERED ON March 29, 1993.

THEODORE E. "TED" MILLARD, ASSISTANT PRESIDING JUDGE OF THE ORANGE COUNTY SUPERIOR COURT SITTING ON ASSIGNMENT BY THE JUDICIAL COUNCIL FOR LOS ANGELES COUNTY.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER

DEPT. 1A

Chambers Session: No appearances. March 29, 1993, present Hon.Ted Millard, Assistant Presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and determine matters of judicial disqualification in this matter. CASE NO. BC 054981. SHIEH v. CHRISTOPHER, et al. PLAINTIFF SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y. KAKITA.

Mr. Shieh has caused multiple Statements of Disqualification against Judge Kakita in three (3) different cases that were assigned Judge Kakita

involving Mr. Shieh as either a plaintiff or defendant. This tripartite challenge to Judge Kakita was denied by this court on February 26, 1993. At that time the court specifically found that the challenge was wholly frivolous, a sham, and outrageous. Mr. Shieh and/or any present or future counsel for Mr. Shieh was also ordered and directed not to file any further challenges for cause against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designee, upon a showing of good cause to believe that said judge is not impartial, to do so.

On March 29, 1993 the court received and reviewed three (3) identical documents entitled "New and Supplemental Request for Clarification, Modification and Reconsideration (Re: Disqualification of Honorable Judge

Kakita.) Last week the court reviewed a group of three (3) other identical documents. The court at that time denied any request to clarify, modify or reconsider its prior ruling denying the challenges to Judge Kakita. The dawn of a new week produced this identical group of documents seeking the same type of relief. The court hereby orders this new group of documents striken. They are frivolous, a sham, and outrageous. In addition they are untimely and not supported by any new facts. The clerk is instructed to cancel the "filed stamp" and replace it with the notation "lodged, but not filed - striken by order the the court."

Furthermore, Mr. Shieh and/or any present or future counsel for Mr. Shieh is also ordered and directed not to file any further motions or requests of

any kind for clarification, modification and/or reconsideration on the court's ruling on challenges for cause against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designee.

The Clerk is directed to give notice by copy of this Minute Order.

IT IS SO ORDERED ON March 29, 1993.

THIODORE E. "TED" MILLARD, ASSISTANT PRESIDING JUDGE OF THE ORANGE COUNTY SUPERIOR COURT SITTING ON ASSIGNMENT BY THE JUDICIAL COUNCIL FOR LOS ANGELES COUNTY.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MINUTE ORDER

DEPT. 1A

Chambers Session: No appearances. March 29, 1993, present Hon. Ted Millard, Assistant presiding Judge of the Orange County Superior Court, assigned by Chief Justice Lucas to hear and etermine matters of judicial disqualification in this matter. CASE NO. BC 059833 SAY & SAY, SHIEH v. CASTELLANO, et al.

PLAINTIFF SHIEH'S MOTION TO DISQUALIFY THE HONORABLE EDWARD Y. KAKITA.

Mr. Shieh has caused multiple Statements of Disqualification against Judge Kakita in three (3) different

cases that were assigned Judge Kakita involving Mr. Shieh as either a plaintiff or defendant. This tripartite challenge to Judge Kakita was denied by tis court on February 26, 1993. At that time the court specifically found that the challenge was wholly frivolous, a sham, and outrageous. Mr. Shieh and/or any present or future counsel for Mr. Shieh was also ordered and directed not to file any further challenges for cause against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designeem, upon a showing of good cause to believe that said judge is not impartial, to do so.

On March 29, 1993 the court received and reviewed three (3) identical documents entitled "New and Supplemental Request for Clarification, Modification and Reconsideration (Re:

Disqualification of Honorable Judge Kakita.) Last week the court reviewed a group of three (3) identical documents. The court at that time denied any request to clarify, modify or reconsider its prior ruling denying the challenges to Judge Kakita. The dawn of a new week produced this identical group of documents seeking the same type of relief. The court hereby orders this new group of documents striken. They are frivolous, a sham, and outrageous. In addition they are untimely and not supported by any new facts. The clerk is instructed to cancel the "filed stamp" and replact it with the notation "lodged, but not filed - striken by order of the court."

Furthermore, Mr. Shieh and/or any present or future counsel for Mr. Shieh is also ordered and directed not to file any further motions or requests of

any kind for clarification, modification and/or reconsideration on the court's ruling on challenges for cause against Judge Kakita, without first seeking and obtaining leave from the Presiding Judge or his designee.

The Clerk is directed to give notice by copy of this Minute Ordr.

IT IS SO ORDERED ON March 29, 1993

THEODORE E. "TED" MILLARD, ASSISTANT PRESIDING JUDGE OF THE ORANGE COUNTY SUPERIOR COURT SITTING ON ASSIGNMENT BY THE JUDICIAL COUNCIL FOR LOS ANGELES COUNTY.

TITLE 3A

VEXATIOUS LITIGANTS

Definitions. 91
Motion to require security. 91.1.
Hearing. 91.2.
Order to furnish security - Adjustment of amount. 91.3.
dismissal if security not furnished. 91.4.
Motion stays litigations. 91.6.
Motion to prohibit filing of new litigation. 91.7.

91. Defenitions.

As used in this title, the following terms have the following meanings:

(a) " Litigation" means any civil action or proceeding commenced, maintained or pending in any state or

federal court of record.

(b) "Vexatious litigant" means a person who does any of the following:

(1) In the immediately preceding seven-year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or

any of the issues of fact or law, determined or concluded by the final deternination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction,or occurrence.

(c) "Security" means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the

party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

(d) "Plaintiff" means the person who commences, institutes or maintains a litigation or causes it to be commenced, instituted or maintained, including an attorney at law acting in propria persona.

(e) "Defendant" means a person (including corporation, association, partnership and firm or governmental entity) against whom a litigation is brought or maintained or sought to be brought or maintained.

S 391.1. Motion for order requiring security; grounds

In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that the will prevail in the litigation against the moving defendant.

S. 391.2 Scope of hearing; ruling not deemed deternination of issues

At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or afficavit, as may be material to the ground of the motion. No determination made by the court in determining or

ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

S 391.3. Order to furnish security; amount

If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

S 391.4. Dismissal for failure to furnish security

When security that has been ordered

furnished is not furnished as ordered, the litigation shall be dismissed as to the defendant for whose benefit it was ordered furnished.

S 391.5 Repealed by states. 1982, c. 517, p. 2336, S 100

S 391.6 Stay of proceedings

When a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motin or the furnishing of the required security as the court shall determine.

S 391.7 Prefiling order prohibiting the filing of new litigation; contempt; conditions

(a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of such an order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of such litigation only if it appears that the litigation has merit and has not been filed for the prupose of harassment or delay. The

presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk shall not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without such an order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating hat the plaintiff is a vexatious litigant subject too a prefiling order as set forth in subdivision (a). The filing of such a notice shall automatically dismissed unless the plaintiff within 10 days of the filing of such notice obtains an

order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of any such order.

(d) The clerk of the court shall provide the Judicial Counsel a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Counsel shall maintain a record of vexatious litigants subject to such prefiling orders and shall annually disseminate a list of such persons to the clerks of the courts of this state.

Section 170.3 (c) (4)

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to havve consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

DECLARATION OF KAREN KAREGEZYAN

I, Karen Karagezyan, declare:

1. I am an employee of Best Plus Messenger Service. My business address is 573 S. Lake Avenue, Suite 4, Pasadena, CA. 91101. I have personal knowledge of the facts set forth herein, and if called as a witness, I could competently testify thereto.

2. On the afternoon of January 8, 1993, I delivered three original documents entitled "Notice of Related Case, Request For Replacement of Judge Kakita and Disqualification" in Say & Say, et al. v. Andrew Castellano, et al., BC 059833, "Notice of Related Case, Request For Replacement of Judge Kakita and Disqualification" in Shieh v. Christopher, BC 054981 and "Request For Replacement of Judge Kakita and

Disqualification" in Fulbright & Jaworski v. Shieh, et al. BC 041515 (collectively "Documents") to Judge Kakita in Dept. 14, of the Los Angeles Superior Court, at 111 N. Hill Street, Los Angeles, CA. 90012. I was informed that Judge Kakita refused to accept these Documents. I then left a copy of these Documents with the clerk in Dept. 14.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed on the 11th day of January 1993, at Pasadena, California.

_____

Karen Karagezyan